

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON ANDRE SMITH,

Defendant.

NO. CR-04-0208-EFS
[NO. CV-09-0044-EFS]

**ORDER DENYING DEFENDANT'S
HABEAS CORPUS PETITION**

Before the Court, without oral argument, is Defendant Jason Andre Smith's Petition for Postconviction Writ of Habeas Corpus. ([Ct. Rec. 46.](#)) Defendant argues that his First Amendment freedom of religion right is violated by a supervised release condition because it requires him to participate in Alcoholics Anonymous and/or Narcotics Anonymous, which are religious-based substance abuse treatment programs. Because the supervised release conditions do not require Defendant to participate in a religious-based substance abuse treatment program, Defendant's petition is denied.

The Amended Judgment ([Ct. Rec. 38](#)) imposes three (3) special supervised release conditions. One of these special conditions - Condition No. 15 - requires: "Defendant shall undergo a substance abuse evaluation and, if indicated, enter into and successfully complete an approved substance abuse treatment program including aftercare.

1 Defendant shall contribute to the cost of treatment according to
2 [D]efendant's ability. Defendant shall allow full reciprocal disclosure
3 between the supervising probation officer and treatment provider." Id.
4 p. 4. Condition No. 15 is rationally related to the goal rehabilitating
5 Defendant. See *United States v. Vegas*, 545 F.3d 743 (9th Cir. 2008).
6 Importantly, Condition No. 15 does not require Defendant to participate
7 in a religious-based substance abuse treatment program, such as
8 Alcoholics Anonymous or Narcotics Anonymous. See *Kerr v. Farrey*, 95 F.3d
9 472, 479-80 (7th Cir. 1996); *In re Garcia*, 106 Wn. App. 625, 630 (2001).
10 Rather, the condition simply provides that, if the substance abuse
11 evaluation concludes that Defendant would benefit from a substance abuse
12 treatment program, Defendant is to participant in such a program. In
13 that event, Defendant's probation officer will work with Defendant to
14 find a secular substance abuse treatment program.

15 Because there is no violation of Defendant's First Amendment rights,

16 **IT IS HEREBY ORDERED:**

17 1. Defendant's Petition for Postconviction Writ of Habeas Corpus
18 (Ct. Rec. 46) is **DENIED**; and

19 2. The related civil case (CV-09-0044-EFS) shall be **CLOSED**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter
21 this order and to provide copies to Defendant, counsel and the U.S.
22 Probation Office.

23 **DATED** this 6th day of March 2009.

24
25 S/ Edward F. Shea
26 EDWARD F. SHEA
United States District Judge

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